

**United States Department of Labor
Employees' Compensation Appeals Board**

G.Q., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
JAMES A. HALEY VETERANS HOSPITAL,
Tampa, FL, Employer**

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**Docket No. 12-1459
Issued: November 27, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 27, 2012 appellant filed a timely appeal from a January 4, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden to establish that appellant's employment-related left ankle sprain was resolved by September 20, 2011.

FACTUAL HISTORY

On June 9, 2011 appellant, then a 62-year-old housekeeping aid, filed a traumatic injury claim alleging that he sustained a left ankle injury on May 26, 2011 in the performance of duty. He stated that he fell on his left ankle while pushing a biocart around a corner.

¹ 5 U.S.C. § 8101 *et seq.*

In May 26, 2011 emergency room notes, Dr. Hector Fuentes-Colon, Board-certified in emergency medicine, reported that appellant had fallen on his left leg while pushing a cart at work. Examination revealed left ankle pain and swelling. Dr. Fuentes-Colon diagnosed left ankle sprain.

The record contains reports and progress notes from Dr. Eve N. Hanna, Board-certified in emergency medicine, for the period May 27 through August 18, 2011. On May 27, 2011 Dr. Hanna stated that appellant had fallen backward while pushing a biocart around a corner at work. Examination of the left ankle revealed limited range of motion, pain, tenderness and mild swelling. Dr. Hanna diagnosed left ankle sprain, noting that x-rays were negative for an acute fracture. She noted that appellant had sustained a broken left ankle in Viet Nam years ago. On May 30, 2011 Dr. Hanna approved two days of lost time due to appellant's left ankle injury, to be followed by sedentary duty. On June 14, 2011 she diagnosed left ankle sprain, resolving, noting ankle stability and minimal edema. Dr. Hanna's plan included a return to regular duty, with the use of splints as necessary.

In an August 18, 2011 duty status report, Dr. Hanna indicated that appellant could return to a sedentary position, with restrictions including no prolonged walking. Appellant acknowledged by his signature that he was able to work according to Dr. Hanna's restrictions.

Appellant submitted an August 18, 2011 report from Dr. Tiffany M. Delutis, a treating physician, who diagnosed left ankle arthritis/sprain. Examination of the left ankle revealed edema and pain to palpation of the sinus tarsi. In notes dated July 12, September 2 and November 14, 2011, Jonette R. Moore, a nurse practitioner, diagnosed left ankle sprain and stated that appellant continued to experience left ankle pain and mild edema.

Appellant submitted reports for the period May 27 through September 20, 2011 from Dr. Lisa A. Williams, a podiatrist. In a May 27, 2011 report, Dr. Williams noted that appellant had injured his left ankle while pushing a cart at work. Examination showed edema localized to the lateral malleolus, as well as pain on palpation and inversion. Dr. Williams diagnosed left ankle sprain. On June 14, 2011 Dr. Williams diagnosed left ankle sprain, resolving and stated that appellant could return to work, as tolerated. She prescribed a brace and compression stockings to be worn daily for support and to minimize swelling.

In a report dated September 20, 2011, Dr. Williams diagnosed left ankle sprain. On examination of the left ankle, she found sensation intact. There was pain on palpation, pain with inversion and pain with dorsiflexion. Dr. Williams found no edema at the time of examination. She prescribed the use of a brace, as well as the use of compression stockings as needed. Appellant was released to normal work activities.

On January 4, 2012 OWCP found the medical evidence was sufficient to accept appellant's claim for left ankle sprain. It indicated that the claim had initially been administratively handled, however, as the medical expenses had exceeded \$1,500.00 they would formally adjudicate the claim. OWCP denied any benefits beyond September 20, 2011, as his treating physician released him to full duty without restrictions on that date.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his employment, it may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.³ The fact that OWCP accepts an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on OWCP to demonstrate an absence of employment-related disability or residuals in the period subsequent to the date of termination or modification.⁴

ANALYSIS

On January 4, 2012 OWCP accepted that appellant sustained a left ankle sprain in the performance of duty on May 26, 2011. On the same day, however, it concluded that his accepted condition had resolved by September 20, 2011. OWCP acceptance of a claim for a specified period of disability does not shift the burden of proof to the claimant to demonstrate that he remains disabled thereafter. It is OWCP's burden to demonstrate the absence of employment-related disability for the period following termination or modification of benefits.⁵ OWCP terminated appellant's benefits as of September 20, 2011 based on his release to full duty without restrictions on that date by Dr. Williams. The Board finds that Dr. Williams' report does not establish that appellant's accepted condition had resolved.

In her September 20, 2011 report, Dr. Williams reiterated her diagnosis of left ankle sprain. On examination, she noted continuing residuals of the ankle sprain, including pain on palpation, pain with inversion and pain with dorsiflexion. In order to treat the symptoms related to appellant's left ankle condition, Dr. Williams prescribed the use of a brace, as well as the use of compression stockings as needed. Based on Dr. Williams' objective findings, the Board cannot conclude that appellant's left ankle sprain had resolved by September 20, 2011.

The Board also finds that the evidence does not establish that appellant was no longer disabled from his date-of-injury job as of September 20, 2011. Although she released appellant to "normal" work activities, Dr. Williams did not specify whether he was then capable of performing the duties of a housekeeping aid, which required him to push heavy carts and might require prolonged walking. The burden is on OWCP to demonstrate an absence of employment-related disability or residuals in the period subsequent to the date of termination or modification.⁶ As Dr. Williams' report does not contain an opinion as to whether appellant's left ankle sprain

² 5 U.S.C. § 8102(a).

³ *D.M.*, Docket No. 10-857 (issued January 3, 2011); *Edwin Lester*, 34 ECAB 1807 (1983).

⁴ See *Elsie L. Price*, 54 ECAB 734, 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine* (*Gilbert H. Blaine*), 26 ECAB 351 (1975).

⁵ See *supra* note 4 and accompanying text.

⁶ *Id.*

had resolved or whether appellant was capable of performing his date-of-injury position, it is of limited probative value and is insufficient to form the basis for OWCP's decision to terminate benefits. OWCP cannot meet its burden with an unrationalized medical report that is of little probative value, even if it is from appellant's treating physician.⁷ The Board notes that there is no other medical evidence of record that contains an opinion that appellant's accepted condition had resolved, or that he was capable of returning to his date-of-injury job, as of September 20, 2011. The Board finds, therefore, that OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP did not meet its burden to establish that appellant's accepted condition had resolved as of September 20, 2011. Accordingly, its January 4, 2012 decision is affirmed as to its acceptance of left ankle sprain. The decision is reversed as to the termination of appellant's medical and compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: November 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ C.G., Docket No. 10-2039 (issued May 13, 2011).